

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-1051
of American Telecommunications)
Enterprise, Inc., Liverpool, New)
York, for authority to operate) GRANTED
as a resale common carrier of)
telecommunications services within)
the state of Nebraska.) Entered: May 17, 1994

Appearances:

For the Applicant:

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For the Commission:

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PRELIMINARY MATTERS

By application filed February 8, 1994, American Telecommunications Enterprise, Inc. (American) of Liverpool, New York seeks authority to operate as a reseller of interLATA interexchange telecommunications services including operator services in Nebraska. American's principal office and its telephone number are 323 Oswego Road, Liverpool, New York, 13088, (315) 453-2323. The company's books and records are maintained at this location. CT Corporation, 206 South 13th Street, Lincoln, Nebraska 68508 is American's registered agent in Nebraska. Notice of the application was published in the Omaha Daily Record February 9, 1994. No one protested the application. American appeared before the Commission for a hearing, chaired by Commissioner Landis, March 23, 1994 in the Commission Hearing Room, Lincoln, Nebraska.

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BY THE COMMISSION:

O P I N I O N A N D F I N D I N G S

Upon consideration of the application, the governing statutes and rules ¹the evidence adduced at the hearing, and being fully informed, the Commission is of the opinion and finds:

Nebraska was divided into three Local Access Transport Areas (LATAs) as a result of the terms of the Modification of Final Judgement (the MFJ) issued in the AT&T divestiture case. United States v. American Telephone & Telegraph Co. 552 F.Supp. 131 (D.D.C. 1982), aff'd sub nom., California v. United States, 460 U.S. 1001 (1983), United States v. American Telephone & Telegraph Co., 569 F. Supp. 990 (D.D.C. 1983) aff'd sub nom., California v. United States, 460 U.S. 1001 (1983).

While Neb. Rev. Stat. 75-604, refers to local exchange service, the Nebraska Supreme Court in Northwestern Bell Telephone v. Consolidated Telephone Co., 180 Neb. 268, 142 N.W.2d 324 (1966) held that long distance service is also subject to the provisions of that statute. This was recognized by the Nebraska Legislature in L.B. 835 (LAWS 1986) because interexchange services (which include resellers) in Sec. 86-805 (part of L.B. 835) are referenced to in Sec. 75-604. For this reason, the Commission distinguishes between intraLATA and interLATA resale when deciding reseller applications.

Lawrence H. Tisch, Vice President of Operations for American testified. He has been in the applicant's employ since January, 1993. Prior to working with American, Tisch was actively involved in telecommunications services while serving in the United States Air Force. He also worked for MCI and ITT before joining American. Tisch has published a book known as Toll Fraud and Tele-Abuse. It is a publication regarding the fraudulent use of modern telecommunications systems.

Tisch testified, and the pleadings reflect, that the applicant seeks interLATA authority. The filed application also seeks authority to supply Alternate Operator Services (AOS). We observe the Commission has consistently held an application for reseller

¹ Interexchange reseller applications are governed by Neb. Rev. Stats. §75-604 and §86-805 (1990 and 1987 Reissues, respectively) and Title 291 Neb. Admin. Regs. Ch. 5, Rule 003.12.

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authority does not² include AOS unless specifically petitioned for in the application.

American was incorporated in Florida in 1992. All of the stock is owned by Joseph C. Passalacqua. Mr. Passalacqua is Chairman of the corporation. Joel R. Freeman serves as President, Lawrence H. Tisch as Vice- President, and Lou McGuinness serves as Treasurer.

Mr. Passalacqua has been involved in satellite television and cable television distribution. He has also worked with private pay telephones in New York. He was recently elected to the Board of Directors of the New York Pay Phone Association which sets standards for ethical behavior within the pay phone industry.

American intends to offer 24 hour originating and terminating operator assisted interLATA communications services from public and semi-public coin phones. American will utilize existing networks of facility based providers authorized by the Commission.

American will provide customer service 24 hours a day. An 800 number is available from 8:30 a.m. to 6:00 p.m. eastern time, these hours can be expanded if the need arises. The customer service department is prepared to respond to most inquiries.

American is authorized (at the time of the hearing) to provide intrastate services such as those sought in Nebraska in the following states: California, Florida, Maryland, Massachusetts, New York, Oklahoma, Pennsylvania, Texas, Utah, Georgia, Alabama, Mississippi, West Virginia, Oregon, and Washington. American also does business in Idaho, Montana and New Jersey. No state commission has rejected an American application, nor has the company been subject to a formal complaint proceeding.

The applicant's financial information was prepared by Phil Pilazari, a CPA firm outside of the Company. Exhibit C was entered into the record at the hearing. This document was prepared at the end of October, 1993. It shows that American's total assets, as of September 30, 1993, amounted to \$430,014. That amount includes a cash contribution to support the company by Mr. Passalacqua. Exhibit D, the income projection, was also offered and accepted into the record. At the time of the hearing, the company was generating approximately \$100,000 a week in revenues.

² We note that a late filed amendment to add AOS to the application is an inadequate solution; the previously published notice of the application would not accurately reflect the authority sought in the application.

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American plans to target customers geographically in US West or GTE locations. American markets services through direct mail, telemarketing, and personal contacts. The company does not use multi-level marketing schemes.

American, through Exhibit E, offered a copy of the proposed tariff which will be implemented in Nebraska should a certificate be granted. This reflects approximately what will be filed in the future with the Commission. The tariff provides for rate discounts according to the time of day. The applicant's proposed tariff, which is part of its application, is in accordance with the Commission's rules and regulations, and appears reasonable in light of the proposed service.

American bills its customers through OAN, a California billing company. When the bills are rendered, the name and the toll free number of OAN is provided should there be any rate complaints. Tisch testified that American would conform its operator service operations to the Commission's rules found at Title 291 NAC Ch. 5, Rule 003.16.

Finally, Tisch stated that competition in the interexchange market place produces benefits to end users of telecommunication services. American will apply additional competitive pressure to existing carriers and thereby force rates closer to cost, resulting in lower rates for end users.

Applicant does not propose to construct facilities for use in intrastate service in Nebraska; therefore, no existing facilities will be duplicated if this reseller application is granted.

Based on the testimony, the exhibits, and the proposed tariff, the application is fair and reasonable, is in the public interest, and should be granted.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-1051 be, and it is hereby granted and American Telecommunications Enterprise, Inc., Liverpool, New York, is hereby authorized to operate as a resale carrier of intrastate interexchange interLATA telecommunications services within the state of Nebraska, including operator services.

IT IS FURTHER ORDERED that applicant shall file, in accordance with the applicable statutes, an annual report with this Commission consisting of (a) a copy of any report filed with the Federal Communications Commission, (b) the annual report to stockholders, and (c) for the state of Nebraska on a combined interstate-intrastate basis, the investment in telephone plant and equipment located within the state, accumulated depreciation thereon, operating revenues, operating expenses, and taxes.

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IT IS FURTHER ORDERED that applicant file an updated tariff prior to offering service pursuant to the certificate granted in this order.

IT IS FINALLY ORDERED that this order be, and it is hereby, made the Commission's official certificate of authority to furnish the service authorized herein as a common carrier.

MADE AND ENTERED at Lincoln, Nebraska this 17th day of May, 1994.

Commissioners Concurring:

Duane D. Gay

//s//Rod Johnson
//s//Frank E. Landis, Jr.
//s//James F. Munnelly

NEBRASKA PUBLIC SERVICE COMMISSION

ATTEST:

James Sanders
Chairman

Robert R. King
Executive Director